

In the Matter of )  
Developing a Unified Inter-carrier ) CC Docket No. 01-92  
Compensation Regime )

The Missouri Independent Telephone Group<sup>1</sup> ("MITG") hereby move that the Federal Communications Commission ("FCC") dismiss the Petition for Declaratory Ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications, and Nextel Partners ("Petitioners") and furthermore deny Petitioner T-Mobile's requested relief set forth in its written Ex Parte Communication dated July 8, 2004.<sup>2</sup>

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2. On October 18, 2002, the Montana Local Exchange Carriers filed a Motion to Dismiss the Petitioners' Petition for Declaratory Judgment for failure to comply with the ex parte rules which require Petitioners to serve a copy of preemption petitions on the affected state or local government entity.<sup>4</sup> On November 1, 2002, the Missouri Small Telephone Company Group filed its Concurrence with Montana LEC Motion to Dismiss.<sup>5</sup> The MITG supports these pleadings.

3. On July 8, 2004, T-Mobile filed a Written Ex Parte Communication<sup>6</sup> in which it added two new requests: (1) that the FCC find that rural LECS can request a wireless carrier to commence interconnection negotiations, and (2) that the FCC find that wireless termination tariffs are preempted by federal law, and that wireless carriers should be permitted, instead, to "opt in" to "optional" rural LEC tariffs.

4. To the extent that there was any potential vagueness to the effect of Petitioner's Petition for Declaratory Ruling preempting state commission actions, T-Mobile makes clear in its recent Written Ex Parte Communication that Petitioners are specifically seeking a finding from the FCC that wireless termination tariffs are preempted by federal law.

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the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. ...".

<sup>4</sup> see Montana Local Exchange Carriers *Motion to Dismiss*, CC Docket No. 01-92, filed Oct. 18, 2002.

<sup>5</sup> see Missouri Small Telephone Company Group *Concurrence with Montana LEC Motion to Dismiss*, CC Docket No. 01-92, filed Nov. 1, 2002.

<sup>6</sup> T-Mobile *Written Ex Parte Communication*, Wireless Termination Tariffs, CC Docket No. 01-92 (July 8, 2004).

5. T-Mobile renews its request for preemption of state action. It states that "wireless termination tariffs have been filed in at least 20 states."<sup>7</sup> However, in this renewed request for preemption of state action, there is still no indication that the Petition for Declaratory Ruling has been served on any of the state commissions where wireless termination tariffs have been approved. The FCC's Rules provide a remedy for this continued failure to comply with the ex parte rules: "Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under Sec. 1.1212(d) and the parties are so informed."

### **Conclusion**

For the reasons stated above, the Missouri Independent Telephone Group respectfully requests that the Commission dismiss the Petition for Declaratory Ruling filed by the CMRS Petitioners.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,  
PEACE & JOHNSON, L.L.C.**

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**ATTORNEYS FOR MITG**

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<sup>7</sup> *Id.* at p. 15.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 3rd day of August 2004 to the following:

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